

07hr_SC-ENR_CRule_06-097_pt01



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Environment and Natural Resources (SC-ENR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR ... bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

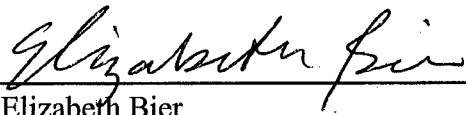
Committee on Environment and Natural Resources

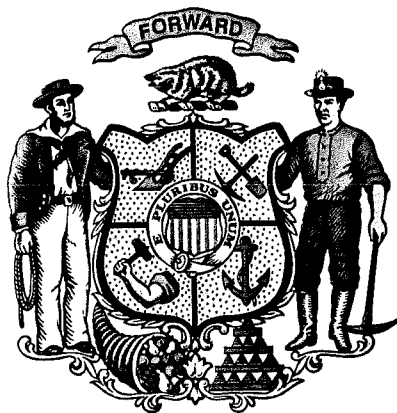
Clearinghouse Rule 06-097

Relating to the definition of "generally accepted forestry management practices".
Submitted by Department of Natural Resources.

January 08, 2007 Referred to Committee on Environment and Natural Resources.

February 8, 2007 No action taken.


Elizabeth Bier
Committee Clerk



Clearinghouse Rule 06-097

Report to
Legislative Council Rules Clearinghouse
NR 1.25, Wis. Adm. Code
Natural Resources Board Order No. FR-28-06

Wisconsin Statutory Authority

s. 823.075(1)(d), Stats., interpreting s. 823.075(1)(d), Stats. (2005 Wisconsin Act 79)

Federal Authority

N/A

Court Decisions Directly Relevant

None

*Guy in MFL,
comes time to cut,
neighbors sue.
3yo in court.*

Analysis of the Rule - Rule Effect - Reason for the Rule

The proposed rule defines "generally accepted forestry management practices" and incorporates by reference the document "Wisconsin Forest Management Guidelines" (FMG). Section 823.075(1)(d), Stats., allows the Department to incorporate into the definition, by reference, the most recent version of the Department publication.

Sections 59.69(4)(a), 60.61(2)(a) and 62.23(7)(b), Stats., provide that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Also, under Act 79, a zoning ordinance may not prohibit forestry operations that are in accordance with generally accepted forestry management practices.

The FMG is used by the Department as a guidance document. It was developed with a process that relied heavily on public participation. A draft edition of the FMG was distributed for public review between October 2002 and March 2003. Hundreds of comments were received in the course of five open houses and from letters. These comments were carefully considered during the development of the FMG. The proposed rule would require updates to the FMG a minimum of every five years and would require the Department to use a process that incorporates public participation, including public comments.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Contacts

Carmen Wagner, Division of Forestry – 267-8576
Jim Christenson, Bureau of Legal Services – 266-7588
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on July 24, 2006

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 1.25 relating to the definition of “generally accepted forestry management practices”.

FR-28-06

Summary Prepared by the Department of Natural Resources

1. Statutes interpreted: s. 823.075 (1)(d), Stats.

2. Statutory authority: s. 823.075 (1)(d), Stats.

3. Explanation of agency authority:

Section 823.075 (1)(s), Stats., requires the Department to define by rule “generally accepted forestry management practices” and allows the Department to incorporate by reference the most recent version of “Wisconsin Forest Management Guidelines” (FMG).

4. Related statute or rule:

Sections 59.69 (4)(a), 60.61 (2)(a), and 62.23 (7)(b), Stats., provide that a forestry operation may not be declared a nuisance if the forestry operation conforms to generally accepted forestry management practices. Also, under this legislation, a zoning ordinance may not prohibit forestry operations that are in accordance with generally accepted forestry management practices.

5. Plain language analysis:

The purpose of this rule is to define “generally accepted forestry management practices” and to incorporate by reference the most recent version of “Wisconsin Forest Management Guidelines” (FMG). The FMG provides a practical reference for landowners, foresters and loggers on techniques that support the sustainable management of forests in Wisconsin.

6. Summary of, and comparison with, existing or proposed federal regulation:

There are no known comparable federal regulations.

7. Comparison with rules in adjacent states:

There are some similarities to Michigan’s Right to Forestry Law (Act 676 of 2002). Iowa, Illinois and Minnesota do not have similar legislation.

In Michigan, “generally accepted forestry management practices” are defined as:

“...those practices as prescribed by the commission. In prescribing generally accepted forestry management practices, the commission shall give due consideration to available department information, written recommendation and comments from the department and other interested persons that may include, but are not limited to, all of the following:

- (i) the department of Agriculture.
- (ii) The Michigan state university extension.
- (iii) The United States department of agriculture agencies, services and programs.
- (iv) College and university forestry programs.
- (v) Professional, industry, and conservation organizations.”

The “commission” is the Commission of Natural Resources and the “department” is the Michigan Department of Natural Resources.

8. Summary of factual data and analytical methodologies:

The proposed definition of "generally accepted forestry management practices" is consistent with the definitions of "practice forestry", "sound forestry practices" and "sound forestry" found in s. NR 46.02 (17), Wis. Admin. Code.

The document "Wisconsin Forest Management Guidelines" (FMG) is used by the Department as a guidance document. It was developed with a process that relied heavily on public participation. A draft edition of the FMG was distributed for public review between October 2002 and March 2003. Hundreds of comments were received in the course of five open houses and from letters. These comments were carefully considered during the development of the FMG. The proposed rule would require updates to the FMG a minimum of every five years and would require the Department to use a process that incorporates public participating, including public comments.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The intent of defining "generally accepted forestry management practices" is to help maintain the right of forest landowners to sustainably manage their forest land. Ensuring that landowners who voluntarily implement generally accepted forestry management practice will provide economic benefits, as well as environmental and social benefits, to communities both locally and statewide.

10. Effect on small business:

No significant fiscal effect on the private sector is anticipated. Cooperating foresters may see an increase in requests for assistance and development of stewardship plans if landowners want to ensure that they are complying with Wisconsin Forest Management Guidelines (FMGs) in order to be protected from a challenge that a forestry operation constitutes a public nuisance. Implementation of FMGs is a voluntary decision by a landowners and is not mandated by this rule.

11. Agency contact person:

Carmen Wagner, 608-266-1667, carmen.wagner@dnr.state.wi.us

12. Place where comments are to be submitted and deadline for submission:

The deadline for submission is September 1, 2006. Written comments may be submitted at the public hearings, by regular mail, fax or email to:

Carmen Wagner
Department of Natural Resources
Division of Forestry
PO Box 7921
Madison WI 53707
Fax: (608) 267-8576

dnrforestryrules@dnr.state.wi.us and include "generally accepted forestry management practice" in the subject line

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>.

SECTION 1. NR 1.25 is created to read:

NR 1.25 Generally accepted forestry management practices. (1) DEFINITION REQUIRED. Section 823.075 (1)(d), Stats., requires the department to define generally accepted forestry management practices.

(2) DEFINITIONS. For the purpose of this chapter:

(a) "Department" means the Wisconsin department of natural resources.

(b) "Generally accepted forestry management practices" means sound and commonly accepted timber cutting, transporting and forest cultural methods recommended or approved by the department for most effective propagation and improvement of the various timber types common to Wisconsin.

(3) DEPARTMENT DUTIES. (a) The department developed "Wisconsin Forest Management Guidelines", PUB FR-226 2003, published by the department in October 2003, shall contain forestry management practices recommended and approved by the department.

Note: Copies of "Wisconsin Forest Management Guidelines", PUB FR-226 2003, are available for inspection at the offices of the Department of Natural Resources and the Revisor of Statutes. Copies may be obtained from the Wisconsin Department of Natural Resources, Division of Forestry, 101 S. Webster Street, P.O. Box 7921, Madison, WI, 53707-7921. Property owners may seek advice on implementation of generally accepted forestry management practices from department foresters, county foresters and cooperating foresters.

(b) The department shall periodically update "Wisconsin Forest Management Guidelines" so that a person may readily determine what forestry management practices are recommended and approved by the department. The department shall update "Wisconsin Forest Management Guidelines" a minimum of every 5 years.

(c) The department shall use a process that incorporates public participation and public comments when updating "Wisconsin Forest Management Guidelines".

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)

BEFORE THE
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS
FR-28-06

NOTICE IS HEREBY GIVEN that pursuant to s. 823.075(1)(d), Stats., interpreting s. 823.075(1)(d), Stats., the Department of Natural Resources will hold public hearings on the creation of s. NR 1.25, Wis. Adm. Code, relating to the definition of "generally accepted forestry management practices". 2005 Wisconsin Act 79 created s. 823.075(1)(d), Stats., which requires the to define "generally accepted forestry management practices" and allows the Department to incorporate into the definition, by reference, the most recent version of the Department publication entitled Wisconsin Forest Management Guidelines. The proposed rule requires updates to the Forest Management Guidelines a minimum of every five years and requires the Department to use a process that incorporates public participation, including public comments.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

<u>August 29, 2006</u> Tuesday	Conference Room, DNR Service Center, 107 Sutliff Ave., Rhineland at 4:00 p.m.
<u>August 30, 2006</u> Wednesday	Room 150, State Office Building, 718 W. Clairemont, Eau Claire at 4:00 p.m.
<u>August 31, 2006</u> Thursday	Gathering Waters Room, DNR South Central Region Hdqrs., 3911 Fish Hatchery Road, Fitchburg at 1:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Carmen Wagner at (608) 266-1667 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Carmen Wagner, Division of Forestry, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 15, 2006. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Wagner.

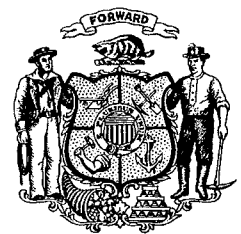
Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary



WISCONSIN STATE LEGISLATURE



Fiscal Estimate — 2003 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number NR 1.25

Subject

Definition of "generally accepted forestry management practices"

Fiscal Effect

State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation
or affects a sum sufficient appropriation.

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

☒ Increase Costs — May be possible to absorb
within agency's budget.

☒ Yes ☐ No

☐ Decrease Costs

Local: ☒ No Local Government Costs

1. ☐ Increase Costs

☐ Permissive ☐ Mandatory

2. ☐ Decrease Costs

☐ Permissive ☐ Mandatory

3. ☐ Increase Revenues

☐ Permissive ☐ Mandatory

4. ☐ Decrease Revenues

☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

☐ Towns ☐ Villages ☐ Cities

☐ Counties ☐ Others

☐ School Districts

☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

s. 20.370 (1)(mv)

Assumptions Used in Arriving at Fiscal Estimate

Summary:

The purpose of the proposed rule is to define "generally accepted forestry management practices".

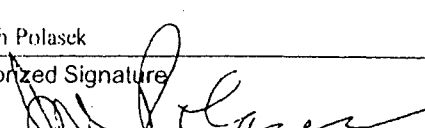
Assumptions:

This rule proposal will require the Department to update the publication "Wisconsin Forest Management Guidelines" which contains generally accepted forestry management practices recommended and approved by the Department. Maintenance of the document would follow typical Department procedures for updating handbooks using an interdisciplinary team. It is estimated that work of an interdisciplinary team would approximate the salary and support costs of one-quarter full-time employee (.25 FTE). In addition, the equivalent of .25 FTEs may be requested from the Bureaus of Wildlife, Endangered Resources, and Watershed Management. The cost of .5 FTEs is \$37,440 (1,040 x \$36/hour salary & fringe = \$37,440). No additional fiscal impacts are anticipated.

Fiscal Impact:

The rule proposal will result in increased costs of \$37,440 annually. While the publication may only be updated a minimum of every five years, the review of new guidance/policy to determine if an update to the publication is required will be an on-going activity.

Long-Range Fiscal Implications

Prepared By:	Telephone No.	Agency
Joseph Polasch	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	05-18-06

Fiscal Estimate Worksheet — 2003 Session

Detailed Estimate of Annual Fiscal Effect

☒ Original ☐ Updated
☐ Corrected ☐ Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 1.25

Subject

Definition of "generally accepted forestry management practices"

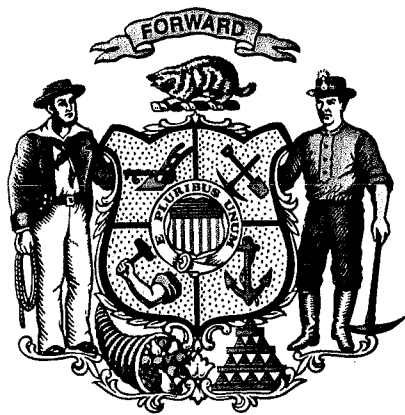
One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$ 37,440	\$ -
FTE Position Changes	(0.50 FTE)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	37,440	-
State Revenues <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	\$	\$ -

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ 37,440	\$
Net Change in Revenues	\$	\$

Prepared By: Joc Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 05-18-06



State of Wisconsin
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FR-28-06

Legislative Council Rules Clearinghouse Number 06-097

Subject of Rules Definition of "generally accepted
forestry management practices"

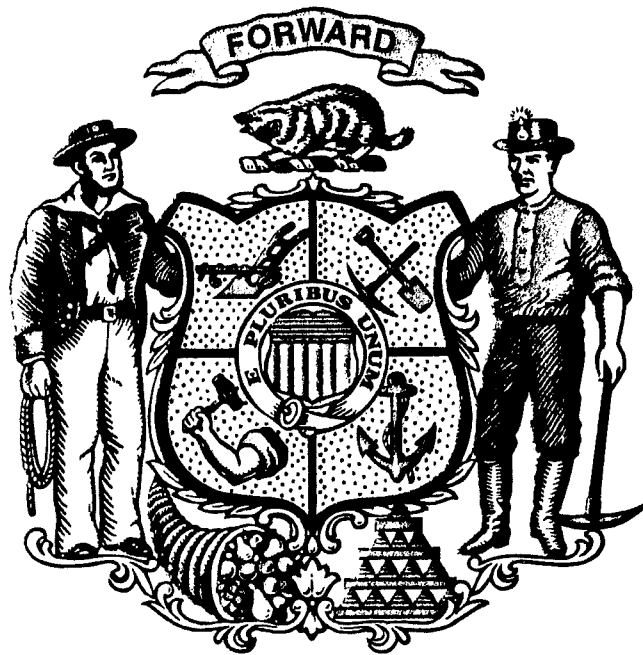
Date of Transmittal to Presiding Officers January 4, 2007

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Skdansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **06-097**

AN ORDER to create NR 1.25, relating to the definition of "generally accepted forestry management practices".

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

07-25-2006 RECEIVED BY LEGISLATIVE COUNCIL.

08-11-2006 REPORT SENT TO AGENCY.

RS:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☐

NO ☒

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 06-097

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

- a. In s. NR 1.25 (1) (title), “DEFINITION REQUIRED” should be changed to “PURPOSE.” [See s. 1.02 (3), Manual.]
- b. Section NR 1.25 (2) (intro.) should read: “In this section:”.

4. Adequacy of References to Related Statutes, Rules and Forms

In the explanation of agency authority section of the analysis, “Section 823.075 (1) (s), Stats.,” should be changed to “Section 823.075 (1) (d), Stats.”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the rule preface, item 4. states that certain sections of the statutes provide that a forestry operation may not be declared to be a nuisance if the forestry operation conforms to generally accepted forestry management practices. It is more accurate to say that these sections of the statutes provide that a zoning ordinance may not prohibit forestry operations that are in accordance with generally accepted forestry management practices.
- b. In the second paragraph of item 8. of the rule preface, the word “participating” should be replaced by the word “participation.”
- c. In item 10. of the rule preface, the first occurrence of the word “in” should be replaced by the word “is.”

d. In s. NR 1.25 (2) (b), the definition of the term “generally accepted forestry management practices” should not differ from the statutory language found in s. 823.075 (1) (d), Stats. The definition could read as follows:

NR 1.25 (2) (b) “Generally accepted forestry management practices” means forestry management practices that promote sound management of a forest. “Generally accepted forestry management practices” include those practices contained in the most recent version of the department’s publication known as Wisconsin Forest Management Guidelines and identified as PUB-FR-226.

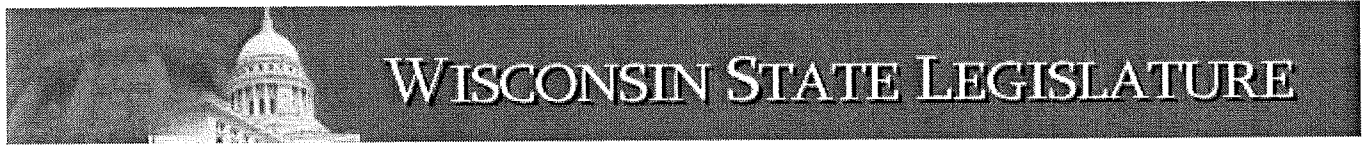
This formulation replicates the statutory language defining the term “generally accepted forestry management practices” and provides that the department guidelines are a subset of that definition. In the alternative, since the department has the statutory authority to define the term by incorporating the guidelines by reference, the definition could rely solely on the guidelines as follows:

NR 1.25 (2) (b) “Generally accepted forestry management practices: means those practices contained in the most recent version of the department’s publication known as Wisconsin Forest Management Guidelines and identified as PUB-FR-226.

e. Following the suggestion in par. (d), above, s. NR 1.25 (3) (a) then can be rewritten to read:

NR 1.25 (3) (a) The department-developed Wisconsin forest management guidelines, PUB-FR-226, shall contain forestry management practices recommended and approved by the department.

The note to the rule also should make no reference to the year 2003, since the department will periodically update the guidelines.



REPORT TO LEGISLATURE

NR 1.25, Wis. Adm. Code Definition of "generally accepted forestry management practices"

Board Order No. FR-28-06
Clearinghouse Rule No. 06-097

Basis and Purpose of the Proposed Rule

Section 823.075(1)(d), Stats., as created by 2005 Wisconsin Act 79, requires the Department to define "generally accepted forestry management practices". The proposed rule defines the term and incorporates by reference the document "Wisconsin Forest Management Guidelines". The "Wisconsin Forest Management Guidelines" is used by the Department as a guidance document. The proposed rule requires updates to the "Wisconsin Forest Management Guidelines" a minimum of every five years and requires the Department to use a process that incorporates public participation, including public comments.

Summary of Public Comments

The comments received at the public hearings were generally in support of the proposed rule. See attached summary of the comments received.

Modifications Made

A definition of "sound management of a forest" was added to address comments referencing concerns for sustainable forestry and biological diversity. The definition also addresses the comment concerning protection of forests.

Appearances at the Public Hearing

Rhineland, August 29, 2006

In Support:	None
In Opposition:	None
As Interest May Appear:	Walt Ruckheim, USDA – Forest Service Senator Roger Breske David Czysz, Stora Enso

Eau Claire, August 30, 2006

In Support:	None
In Opposition:	None
As Interest May Appear:	Megan Parker, The Country Today

Fitchburg, August 31, 2006

In Support:	None
In Opposition:	None
As Interest May Appear:	Kathleen Fullin, 110 Farley Avenue, Madison, WI

Changes to Rule Analysis and Fiscal Estimate

No changes were required.

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

Small businesses affected by this rule include forest landowners, foresters, resource managers, loggers and equipment operators. There is not any compliance, reporting, bookkeeping or other procedures imposed on small businesses as part of this rule. A final regulatory flexibility analysis is not required under s. 227.19(3m), Stats., because the proposed rule will not have a significant economic impact on small businesses.

Summary of Public Comments for NR 1.25, Wis. Admin. Code to Define “Generally Accepted Forestry Management Practices”

This document summarizes the comments received during the public comment period and Department responses on proposed s. NR 1.25, Wis. Admin. Code.

Written Comments

Pete Bartelt, Price County Forest and Parks Administrator

Price County Forestry and Parks Department supports the "generally accepted forestry management practices" published in the DNR publication "Wisconsin Forest Management Guidelines". We also feel that a review and update every five years will insure it remains current with new technology supporting sustainable forestry practices. We would request that someone representing the Wisconsin County Forest Association participate in the review.

Response: The Wisconsin County Forest Association has been identified by the Department as likely to participate in the review process.

Anthony Deininger, Fox Valley Technical College, Natural Resources Department

I support any effort that allows a landowner to manage their woodlot or forested land in an acceptable manner. The proper management of a forest is a right that should be equal to all landowners regardless of location of their woodlot.

Response: The definition of "generally acceptable forestry management practices" and referencing the Wisconsin Forest Management Guidelines (FMG) are intended to provide a landowner with guidance on how to manage a forest, recognizing the landowner's management objectives, site conditions, forest condition and other factors.

Carla Klein, Chapter Director, Sierra Club, John Muir Chapter

The John Muir Chapter of the Sierra Club is writing in regard to the proposed changes to Natural Resources Rule NR 1.25. We respectfully request that the definition "Generally accepted forestry management practices" be modified to include references to maintenance of biological diversity and sustainable forestry practices.

Response: References to ecological principles for the management and conservation of forest ecosystems to meet wildlife habitat, watershed, aesthetics, cultural and biological goals and objectives has been added to the definition of "sound management of a forest". The definition of "generally accepted forestry management practices" has been changed to be the same as the definition found in s. 823.075 (1)(d), Stats.

Colette Matthews, Executive Director, Wisconsin County Forest Association

The WCFA is in support of the "generally accepted forestry management practices" as put together and published in the DNR publication "Wisconsin Forest Management Guidelines". We also are in favor of reviewing and updating this publication every five years, with the thought that this excellent publication will always be on the leading edge of sustainable forestry practices. Much time, thought and effort was put into this publication. It can be used by the small landowner, or assist the owner of large parcels with management questions. It is written in language easy to understand by a lay person.

If a private landowner does not choose to harvest their timber, there is no requirement to do so, unless they are enrolled in a tax program, but it explains how best their property should be managed to remain healthy. If a landowner is enrolled in one of the tax programs, they have a responsibility to provide for the common good of the state as a payback for the lower tax rate they are receiving. They should have no problem in following these rules and regulations. This rule gives them a picture of what they must follow if they wish to continue to receive a tax break.

Response: The definition of "generally acceptable forestry management practices" and referencing the Wisconsin Forest Management Guidelines (FMG) are intended to provide a landowner with guidance on how to manage a forest, recognizing the landowner's management objectives, site conditions, forest condition and other factors.

Glen Stanosz, Ph. D., University of Wisconsin - Madison, Department Plant Pathology and Department of Forest Ecology and Management

I strongly recommend the inclusion of "protection" to the already included "propagation" and "improvement." Protection from diseases and insects that are perhaps the most serious threats to our forests is far underappreciated and undersupported by the public and by your organization.

Response: References to protection of forest ecosystems to meet wildlife habitat, watershed, aesthetics, cultural and biological goals and objectives, while maintaining the productivity of a forest, has been added to the definition of "sound management of a forest". The definition of "generally accepted forestry management practices" has been changed to be the same as the definition founding s. 823.075 (1)(d), Stats.

Caryl Terrell

The proposed Natural Resources Rule NR 1.25 to define "Generally accepted forestry management practices" should include references to sustainable forestry practices and to maintenance of biological diversity.

Response: References to ecological principles for the management and conservation of forest ecosystems to meet wildlife habitat, watershed, aesthetics, cultural and biological goals and objectives has been added to the definition of "sound management of a forest". The definition of "generally accepted forestry management practices" has been changed to be the same as the definition founding s. 823.075 (1)(d), Stats.

Bill Willers

Wisconsin law states that no "forestry operation" may be declared a nuisance, nor may any town or county pass a zoning ordinance interfering with forestry operations, if carried out by "generally accepted forestry management practices." But here's the question: What, exactly, is "generally accepted" and who determines it?

This is being covered at a DNR hearing in Fitchburg on Aug. 31. What is proposed is that "generally accepted forestry management practices" be defined as "methods recommended or approved by the department for most effective propagation and improvement of the various timber types common in Wisconsin."

For any independent biologist who values native forests and considers the thousands of noncommercial plants and animals that compose them to be every bit as much "the forest" as a few commercial "timber types," this proposed law sounds like straightforward tree farming. And that is exactly what it is, because the proposed wording, to become part of Forest Management Guidelines, is exactly as now found in the Forest Tax Law, which is geared specifically to the production of lumber and pulp.

What is proposed, therefore, is an industrial recipe for maintaining the North Woods as a vast fiber mill. As this definition is being considered, understand some related facts.

The forest products industry enjoys such dominance in government, including the DNR and much of the UW System, that any walls separating them are only theoretical. Groups deciding the fate of state forests, including the governor's Council on Forestry, consist almost exclusively of personnel in, or connected to, industry. Ecologists free of industrial connection decide nothing. Industry has pressed so-called "right to practice forestry" laws so that already three state statutes prohibit ordinances interfering with logging done according to practices deemed "generally accepted."

What is being proposed means that "generally accepted" is to be absolutely anything approved by a DNR forester, no matter how destructive to non-industrial values.

Any branch of science serving a profit-oriented industry is not independent and cannot offend the profit interests of the industry that feeds it. In recent years, every attempt by independent biologists to make protection of native biological diversity a prime function of state forests and there have been a number has been crushed by industry and its governmental representatives, lobbyists, foresters and PR personnel.

The public is being trained to see plantations as real forests. Stora Enso Corp., the vice president of which chairs our governor's Council on Forestry, distributes circulars with a photo of a pine plantation as a "well managed forest." Wisconsin Public Television's show "In Wisconsin" airs pieces showing pine plantations as "well managed forests."

Most troubling, though, is a new K-12 forestry education system called LEAF. In 2002, in an amazing "revolving door" move, the head of DNR Forestry retired to become the director of the Wisconsin Professional Loggers Association and thereby industry's most powerful lobbyist. Shortly thereafter, LEAF was introduced into public schools with special thanks to this lobbyist.

I have reviewed LEAF's lesson guides and videos. In my view, LEAF is subtly crafted industrial propaganda to train the public that the primary function of forests is to be transformed into monocultures and plantations so as to serve as fiber mills, economic engines and producers of consumer goods.

Because no investigative journalism has followed the complex money trails through industry, government and academia, this has transpired below public radar. State forests are already managed largely for industry. A recent biotic survey of the Brule River State Forest, for example, reveals that 71 percent of its tree-covered area is managed as aspen monoculture or pine plantation.

If industry and its governmental and academic agents can dictate that "generally accepted practice" is anything an industrial forester says it is, every alternative view of what constitutes a "forest" is lost, because any person or group questioning any industrial practice would be guaranteed a loss in the courts, and also required to pay court costs plus charges industry might claim due to loss of logging time.

It is perfectly anti-democratic, because every possible route for citizen challenge of any logging activity will have been closed.

Response: The proposed includes a definition of "generally acceptable forestry management practices" and references the Wisconsin Forest Management Guidelines (FMG) help determine what practices are generally acceptable. The guidelines found in the FMG are designed to be flexible, recognizing that landowners have different management objectives, site conditions, and other considerations. The goal of the FMG is to empower landowners, foresters and loggers so that they can make informed decisions on how to manage a particular parcel. It is also important to recognize that the FMG is not a management plan. The FMG provides information to support the implementation of a plan, once it is developed. The FMG also does not mandate whether a particular forest management activity should or should not occur. The FMG is designed to provide guidance on how to implement an activity, once a plan identifies a need.

Ultimately, the goal of the FMG is encourage informed decision-making by landowners and land managers that takes into account resource needs, landowner objectives, site capabilities, and the best available information available at any given time.

Hearing Comments

Kathleen Fullin

Clear-cuts may be considered an acceptable forestry practice, but what if it would destroy plant or animal diversity. What would happen in that situation? It sounds like from reading the rule that you cannot object if it is sound forestry, but what if there is a conflict between forestry and wildlife considerations? Does a community have the ability to require certain practices to protect that area?

Or what if a landowner is leaving snags for wildlife, but the neighbors object to the way it looks? Is the landowner subject to some local pressure to cut the trees?

When the Department developed the forest management guidelines, was there discussion of practices other than timber harvesting being acceptable?

Response:

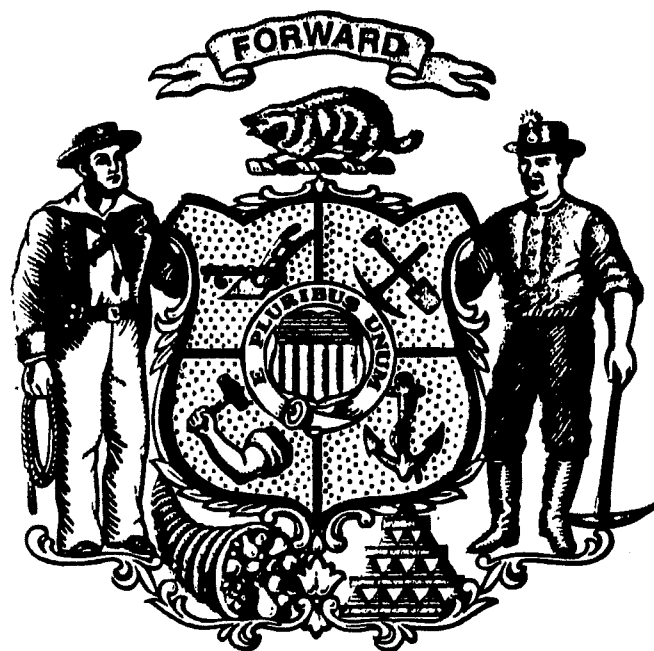
Silvicultural systems are divided into even and uneven-aged management. Even-aged management includes clear-cuts, but there are generally accepted ways of conducting a clear-cut. The trees have to be a certain age, the trees need to be regenerated, and practices need to be implemented to ensure future productivity of the site.

There are recommendations and guidelines applicable to wildlife habitat, but if endangered species are an issue, then those laws will apply. Anytime a forest is disturbed, either by human activities or by natural events, the forest structure will change, and some animals will benefit and some will not. The guidelines include things landowner may do to encourage wildlife habitat, but it is not a requirement.

If the landowner is following generally accepted forestry management practices, then a community would not have authority to prohibit an activity. If a landowner is not following those practices, then a community would have authority to stop an activity or require certain actions be taken.

In the case of leaving snags, peer pressure may likely be more a factor than a local ordinance. Snags may become a safety issue, but is unlikely to be an aesthetic issue in ordinances.

The guidelines address the breadth of forest management objectives, including timber, water quality, recreation, wildlife habitat and others. A landowner can determine what objectives is most important, and based on those objectives, site characteristics, and other considerations, the guidelines can be used to help determine how to achieve those objectives. These may include active management or passive management options.



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 1.25 relating to the definition of “generally accepted forestry management practices”.

FR-28-06

Summary Prepared by the Department of Natural Resources

1. Statutes interpreted: s. 823.075 (1)(d), Stats.

2. Statutory authority: s. 823.075 (1)(d), Stats.

3. Explanation of agency authority:

Section 823.075 (1)(d), Stats., requires the Department to define by rule “generally accepted forestry management practices” and allows the Department to incorporate by reference the most recent version of “Wisconsin Forest Management Guidelines” (FMG).

4. Related statute or rule:

Sections 59.69 (4)(a), 60.61 (2)(a), and 62.23 (7)(b), Stats., provide that a zoning ordinance may not prohibit forestry operations that are in accordance with generally accepted forestry management practices.

5. Plain language analysis:

The purpose of this rule is to define “generally accepted forestry management practices” and to incorporate by reference the most recent version of “Wisconsin Forest Management Guidelines” (FMG). The FMG provides a practical reference for landowners, foresters and loggers on techniques that support the sustainable management of forests in Wisconsin.

6. Summary of, and comparison with, existing or proposed federal regulation:

There are no known comparable federal regulations.

7. Comparison with rules in adjacent states:

There are some similarities to Michigan’s Right to Forestry Law (Act 676 of 2002). Iowa, Illinois and Minnesota do not have similar legislation.

In Michigan, “generally accepted forestry management practices” are defined as:

“...those practices as prescribed by the commission. In prescribing generally accepted forestry management practices, the commission shall give due consideration to available department information, written recommendation and comments from the department and other interested persons that may include, but are not limited to, all of the following:

- (i) the department of Agriculture.
- (ii) The Michigan State university extension.
- (iii) The United States department of agriculture agencies, services and programs.
- (iv) College and university forestry programs.
- (v) Professional, industry, and conservation organizations.”

The “commission” is the Commission of Natural Resources and the “department” is the Michigan Department of Natural Resources.

8. Summary of factual data and analytical methodologies:

The rule proposal is consistent with existing policy found in ch. NR 46, Wis. Admin. Code, for the Forest Tax Program. The Board approved the definitions of “practice forestry”, “sound forestry practices” and “sound forestry”

in s. NR 46.02 (17), Wis. Admin. Code, and the definition of "sound forestry practices" in s. NR 46.15 (29), Wis. Admin. Code.

The document "Wisconsin Forest Management Guidelines" (FMG) is used by the Department as a guidance document. The FMG provides guidance based on the best available scientific information. It was developed with a process that relied heavily on public participation. A draft edition of the FMG was distributed for public review between October 2002 and March 2003. Hundreds of comments were received in the course of five open houses and from letters. These comments were carefully considered during the development of the FMG. The proposed rule would require updates to the FMG a minimum of every five years and would require the Department to use a process that incorporates public participation, including public comments.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The intent of defining "generally accepted forestry management practices" is to help maintain the right of forest landowners to sustainably manage their forest land. Ensuring that landowners who voluntarily implement generally accepted forestry management practice will provide economic benefits, as well as environmental and social benefits, to communities both locally and statewide.

10. Effect on small business:

No significant fiscal effect on the private sector is anticipated. Cooperating foresters may see an increase in requests for assistance and development of stewardship plans if landowners want to ensure that they are complying with Wisconsin Forest Management Guidelines (FMGs) in order to be protected from a challenge that a forestry operation constitutes a public nuisance. Implementation of FMGs is a voluntary decision by a landowner and is not mandated by this rule.

11. Agency contact person:

Carmen Wagner, 608-266-1667, carmen.wagner@dnr.state.wi.us

SECTION 1. NR 1.25 is created to read:

NR 1.25 Generally accepted forestry management practices. (1) PURPOSE. Section 823.075 (1)(d), Stats., requires the department to define generally accepted forestry management practices.

(2) DEFINITIONS. In this section:

(a) "Department" means the Wisconsin department of natural resources.

(b) "Generally accepted forestry management practices" means forestry management practices that promote sound management of a forest. "Generally accepted forestry management practices" include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

(c) "Sound management of a forest" means sustainably managing a forest with the application of ecological, physical, quantitative, managerial, economic, and social principles to the regeneration, management, utilization, protection and conservation of forest ecosystems to meet specified wildlife habitat, watershed, aesthetics, cultural and biological goals and objectives while maintaining the productivity of the forest.

(3) DEPARTMENT DUTIES. (a) The department-developed Wisconsin Forest Management Guidelines, PUB FR-226, shall contain forestry management practices that are recommended and approved by the department to promote sound management of a forest.

Note: Copies of Wisconsin Forest Management Guidelines, PUB FR-226, are available for inspection at the offices of the Department of Natural Resources and the Revisor of Statutes. Copies may be obtained from the Wisconsin Department of Natural Resources, Division of Forestry, 101 S. Webster Street, P.O. Box 7921, Madison, WI, 53707-7921. Property owners may seek advice on implementation of generally

accepted forestry management practices from department foresters, county foresters and cooperating foresters.

(b) The department shall periodically update Wisconsin Forest Management Guidelines so that a person may readily determine what forestry management practices are recommended and approved by the department. The department shall update Wisconsin Forest Management Guidelines a minimum of every 5 years.

(c) The department shall use a process that incorporates public participation and public comments when updating Wisconsin Forest Management Guidelines.

SECTION 2. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 6, 2006.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)